



TAX EXEMPT AND  
GOVERNMENT ENTITIES  
DIVISION

DEPARTMENT OF THE TREASURY  
INTERNAL REVENUE SERVICE  
TE/GE EO EXAMINATIONS  
1100 COMMERCE ST. MAIL STOP 4920 DAL  
DALLAS, TEXAS 75242

501-09.00

Date: August 7, 2013

Release Number: 201349020

Release Date: 12/6/2013

LEGEND

ORG - Organization name

XX - Date Address - address

Taxpayer Identification Number:

Person to Contact:

Employee Identification Number:

ORG

ADDRESS

Contact Numbers:

**CERTIFIED MAIL**

Dear :

This is a final determination regarding your foundation classification. This letter modifies our initial ruling in March 19XX and in our letters to you dated February 9, 20XX and April 20, 20XX in which we determined that you were an organization described in section 509(a)(1) and 170(b)(1)(A)(vi) of the Internal Revenue Code (Code).

Based on your sources of support, we have determined that you are not a private foundation within the meaning of section 509(a) of the Code because you are an organization of the type described in section 509(a)(2) of the Code effective January 1, 20XX. Your tax exempt status under section 501(c)(3) of the Internal Revenue Code is not affected.

The modification of your foundation status was made for the following reasons:

The regulations under section 170 provide that an organization will be described in section 170(b)(1)(A)(vi) if it normally receives at least 33 1/3 percent of its support from governmental units or from the general public. See section 1.170A-9(f). Because your primary source of support is from registration fees, your organization is not considered a publicly supported organization under Code sections 509(a)(1) and 170(b)(1)(A)(vi). However, effective for all tax years beginning with the tax year ending December 31, 20XX, you are considered a publicly supported organization under Code section 509(a)(2) which includes organizations that normally receive more than one-third of their support from a combination of gifts, grants, contributions, membership fees, and gross receipts from performing exempt function activities and not more than one-third of their support from investment income and unrelated business taxable income.

Grantors and contributors may rely on this determination, unless the Internal Revenue Service publishes a notice to the contrary. Because this letter could help resolve any questions about your private foundation status, please keep it with your permanent records.

Processing of tax returns and assessments of any taxes due will not be delayed should a petition for declaratory judgment be filed under section 7428 of the Internal Revenue Code.

If you decide to contest this determination, you may file an action for declaratory judgment under the provisions of section 7428 of the Code in one of the following three venues: United States Tax Court, the United States Court of Federal Claims, or the United States District Court for the District of Columbia. A petition or complaint in one of these three courts must be filed before the 91<sup>st</sup> day after the date this determination was mailed to you if you wish to seek review of our determination. Please contact the clerk of the respective court for rules and the appropriate forms regarding filing petitions for declaratory judgment by referring to the enclosed Publication 892. Please note that the United States Tax Court is the only one of these courts where a declaratory judgment action can be pursued without the services of a lawyer. You may write to the courts at the following addresses:

You also have the right to contact the Office of the Taxpayer Advocate. Taxpayer Advocate assistance is not a substitute for established IRS procedures, such as the formal Appeals process. The Taxpayer Advocate cannot reverse a legally correct tax determination, or extend the time fixed by law that you have to file a petition in a United States court. The Taxpayer Advocate can, however, see that a tax matter that may not have been resolved through normal channels gets prompt and proper handling. You may call toll-free, 1-877-777-4778, and ask for Taxpayer Advocate Assistance. If you prefer, you may contact your local Taxpayer Advocate at:

If you have any questions, please contact the person whose name and telephone number are shown in the heading of this letter.

Sincerely yours,

Nanette M. Downing  
Director, EO Examinations

Enclosure:

Signed Form 6018

Publication 892, *Exempt Organization Appeal Procedures for Unagreed Issues*

**Internal Revenue Service**  
**Tax Exempt and Government Entities Division**  
Exempt Organizations: Examinations  
TEGE:EO 7942 MS 4929-CHI  
230 S Dearborn Street Room 1744  
Chicago IL 60604

**Department of the Treasury**

Date: May 1, 2012

ORG  
ADDRESS

Taxpayer Identification Number:  
Form:  
Tax Year(s) Ended:  
Person to Contact/ID Number:  
Contact Numbers:  
Telephone:  
JF Telephone:  
Fax:

**Certified Mail – Return Receipt Requested**

Dear

We have enclosed a copy of our report of examination explaining why we propose modifying your foundation status under section 509(a) of the Internal Revenue Code (Code).

Your exempt status under section 501(c)(3) of the Code is still in effect.

If you accept our findings, take no further action. We will issue a final letter modifying your foundation status.

If you do not agree with our proposed modification of your foundation status, you may provide additional information that you would like to have considered, or you may submit a written appeal. The enclosed Publication 3498, *The Examination Process*, and Publication 892, *Exempt Organization Appeal Procedures for Unagreed Issues*, explain how to appeal an Internal Revenue Service (IRS) decision. Publication 3498 also includes information on your rights as a taxpayer and the IRS collection process.

If you request a conference with Appeals, you must submit a written protest within 30 days from the date of this letter. An Appeals officer will review your case. The Appeals Office is independent of the Director, EO Examinations. The Appeals Office resolves most disputes informally and promptly. You may also request that we refer this matter for technical advice as explained in Publication 892. If we issue a determination letter to you based on technical advice, no further administrative appeal is available to you within the IRS regarding the issue that was the subject of the technical advice.

If we do not hear from you within 30 days from the date of this letter, we will process your case based on the recommendations shown in the report of examination. If you do not protest this proposed determination within 30 days from the date of this letter, the IRS will consider it to be a failure to exhaust your available administrative remedies. Section 7428(b)(2) of the Code provides, in part: "A declaratory judgment or decree under this section shall not be issued in any proceeding unless the Tax Court, the Claims Court, or the District Court of the United States for

the District of Columbia determines that the organization involved has exhausted its administrative remedies within the Internal Revenue Service." We will then issue a final letter.

You have the right to contact the office of the Taxpayer Advocate. Taxpayer Advocate assistance is not a substitute for established IRS procedures, such as the formal appeals process. The Taxpayer Advocate cannot reverse a legally correct tax determination, or extend the time fixed by law that you have to file a petition in a United States court. The Taxpayer Advocate can, however, see that a tax matter that may not have been resolved through normal channels gets prompt and proper handling. You may call toll-free 1-877-777-4778 and ask for Taxpayer Advocate Assistance. If you prefer, you may contact your local Taxpayer Advocate at:

If you have any questions, please call the contact person at the telephone number shown in the heading of this letter. If you write, please provide a telephone number and the most convenient time to call if we need to contact you.

Thank you for your cooperation.

Sincerely,

Nanette M. Downing  
Director, EO Examinations

Enclosures:  
Publication 3498  
Publication 892  
Report of Examination

<b>Form 886A</b>	Department of the Treasury - Internal Revenue Service	
<b>Explanation of Items</b>		
<b>Name of Taxpayer</b> <b>ORG</b> <b>EIN: EIN</b>		<b>Year/Period Ended</b> <b>20XX December 31</b>

**LEGEND**

ORG - Organization name      EIN - ein      XX - Date

**ISSUES**

Whether ORG's is excluded from private foundation status because they are a publicly supported organization described in Section 509(a)(2).

**FACTS:**

ORG organize, direct and sponsor youth football, cheerleading and pom program for youths between the ages of 5 years old through 14 years old. They provide guidance, coaching, uniforms, referees and equipments relating to the above sports.

ORG generate their income from the following sources:

- Registrations Fees (Football, Cheerleading and Pom)
- Commissions from team pictures
- Concession Fees
- Fundraisers
- Raffles
- Golf Fundraiser
- Cheerleading Competition

ORG received a letter from the Service dated February 09, 20XX, stating that "Our records indicate this organization is not a private foundation within the meaning of section 509(a) because you are described in section(s) 509(a)(1) and 170(b)(1)(A)(vi).

ORG also received another letter from the Service dated April 20, 20XX, stating that "Our records indicate this organization is not a private foundation within the meaning of section 509(a) because it is classified under section(s) 170(b)(1)(A)(vi).

For the 4-year period, ORG received the following support:

Membership Fees	
Gross Receipts	
Gross Investment income	
Total Support	
Less Gross Receipts	
Public Support %	

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<b>Explanation of Items</b>		
Name of Taxpayer <b>ORG</b> <b>EIN: EIN</b>		Year/Period Ended <b>20XX December 31</b>

**LAW:**

509(a) of the Code provides that the term “private foundation” means a domestic or foreign organization described in section 501(c)(3) other than an organization described in section 170(b)(1)(A) other than in clauses (vii) and (viii).

Section IRC 170(b)(1)(A)(vi) of the Code describes an organization that normally receives a substantial part of its support (exclusively of income received in the exercise or performance by such organization of its charitable, educational or other purpose of function constituting the basis of its exemption under section 501(a) from a governmental unit or from direct or indirect contributions from the general public.

An organization is publicly supported so as to qualify under IRC 170(b)(1)(A)(vi) if it “normally” receives at least 33 1/3% of its total “support” from governmental units, direct or indirect contributions from the general public, or a combination of these sources.

An organization that does not meet the 33 1/3% test may nonetheless be considered publicly supported if:

- a. it “normally” receives a substantial part of its support from governmental units, the general public or a combination of these sources and
- b. it satisfies a number of other factors that collectively evidence continuing public involvement in its affairs.

Where an organization receives at least 10% but less than 33 1/3% of its total support from contributions made directly or indirectly by the general public or from governmental units, Reg. 1.170A-9(e)(3) provides that the Service will then look to the factors (described above) to determine whether the organization is in the nature of a publicly supported organization. An organization with at least 10% public support that also shows sufficient characteristics indicating it is in the nature of a publicly supported organization may qualify, as an organization described in IRC 170(b)(1)(A)(vi).

The regulations make clear that the 10% requirement is minimal so that an organization without this minimal amount of public support is not described in IRC 170(b)(1)(A)(vi).

This computation should not be considered if the organization is primarily supported on gross receipts from related activities. Regulations 1.170A-9(e)(7)(ii).

For an organization to be excluded from private foundation status as an organization described in IRC 509(a)(2), it must normally receive more than one-third of its support from any combination of gifts, grants, contributions, membership fees, and gross receipts from permitted sources, and not more than one-third of its support from gross investment income and the excess of the amount of unrelated business taxable income over the amount of taxes imposed by IRC 511.

<b>Form 886A</b>	Department of the Treasury - Internal Revenue Service	
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a. Reg. 1.509(a)-3(a)(4) states that the one-third support test and the one-third gross investment and unrelated income test are designed to insure that an organization that is excluded from private foundation status under IRC 509(a)(2) is responsive to the general public rather than to a limited number of donors or other persons.

509(a)(2) is an organization which normally receives more than one-third of its support in each taxable year from any combination of gifts, grants, contributions, or membership fees, and gross receipts from admissions, sales of merchandise, performance of services, or furnishing of facilities, in an activity which is not an unrelated trade or business, not including such receipts from any person, or from any bureau or similar agency of a governmental unit (as described in any taxable year to the extent such receipts exceed the greater of \$5,000 or 1 percent of the organization's support in such taxable year, from persons other than disqualified persons with respect to the organization, from governmental units described in or from organizations described in section 170(b)(1)(A) and normally receives not more than one-third of its support in each taxable year from the sum of gross investment income and the excess (if any) of the amount of the unrelated business taxable income over the amount of the tax imposed by section 511.

The 509(a)(2) exclusion requires a two-part test. the first test is the one-third support test.

In computing whether an organization meets the one-third support test of IRC 509(a)(2)(A),

a. the organization's total support (as defined in IRC 509(d)) is the denominator of the fraction.

b. The numerator is the amount of support received (subject to certain limitations) from any combination of gifts, grants, contributions and membership fees, and gross receipts from admissions, sales, performance of services, or furnishing of facilities related to an activity which is not an unrelated trade or business.

Reg. 1.509(a)-3(a)(2).

### **Government Position**

ORG's \$ in public support constitutes revenue from registration fees, gross receipts and fundraising. This amount is % percent of its total support less investment income.

It is the Government's position that since % percent public support is greater than the required % percent public support, the organization qualifies as an organization described in section 509(a)(2) of the code. The organization's foundation status should be modified from an organization described in section 509(a)(1) and 170(b)(1)(A)(vi) of the code to an organization described in section 509(a)(2) of the code.

The effective date of this modification will be January 1, 20XX.

### **Taxpayer Position**

The taxpayer appears to be in agreement that they qualifies as a publicly supported organization under Section 509(a)(2) because they completed for the tax period ending December 31, 20XX and 20XX, Forms 990 and

<b>Form 886A</b>	Department of the Treasury - Internal Revenue Service <b>Explanation of Items</b>	
<b>Name of Taxpayer</b> <b>ORG</b> <b>EIN: EIN</b>		<b>Year/Period Ended</b> <b>20XX December 31</b>

990-EZ Schedule A Part 1, checked Line 9 "An organization that normally receives more than % of its support from contributions, membership fees, and gross receipts from activities related to it exempt functions subject to certain exceptions, and no more than % of its support from gross investment incomes and unrelated business taxable income from business" and Part III Support Schedule for Organization described in Section 509(a)(2).

**Conclusion**

ORG foundation status should be modified from a publicly supported organization described in section IRC 509(a)(1)-170(b)(1)(A)(vi) of the code a publicly supported organization described in section to IRC 509(a)(2).

**"Please note that this is not a final report. The draft report is subject to review and modification by our Mandatory Review staff. You will receive the final report from Mandatory Review"**